

Student's rape lawsuit against Bethel School District must go to jury, high court rules

By Alexis Krell
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Just because harm to a student happens when a pupil is outside school custody, that doesn't necessarily mean the school is free from liability, the state's high court said Thursday.

[In a 5-4 decision, the Washington Supreme Court](#) ruled that the lawsuit of a woman who was raped as a teenager by an older student in the Bethel School District must go back to Superior Court to be heard by a jury.

The woman, identified in court records as N.L., was 14 in 2007, when she was attacked at the older student's home.

"School districts have a duty to take reasonable care to protect the children in their custody from foreseeable harm," Justice Steven Gonzalez wrote in the opinion for the majority.

"Whether the district failed to meet its duty and whether any such failure caused N.L.'s injury are properly matters for the jury."

N.L. sued the school district in 2012, contending the district knew her 18-year-old attacker, Nicholas Clark, was a registered sex offender. She said the district failed to notify staff members or take other precautions to protect students from him.

The district argued it wasn't liable, because N.L. wasn't in its care when the rape happened. Pierce County Superior Court Judge Susan Serko dismissed the lawsuit, the state Court of Appeals reversed that decision and the Supreme Court decision Thursday upheld the reversal.

Julie Kays, N.L.'s attorney, said the decision "gives our client, who was sexually assaulted by a registered sex offender student, her day in court."

A call to Francis Floyd, the district's attorney, wasn't returned Thursday afternoon.

Clark mentored younger students at track practice, N.L. alleged, which is how they met. He persuaded her to skip track practice under the pretense of taking her to lunch, and instead took her to his home, where he assaulted her.

Clark pleaded guilty to second-degree assault in connection with the attack, and was sentenced to a year and a month in prison.

He was a Bethel High School student at the time and N.L. was a pupil at Bethel Junior High School. The schools shared a track field. The lawsuit argues the district didn't notify track coaches or other staff members about Clark's sex offender status.

In 2004, he assaulted another student in the district, pleaded guilty to attempted indecent liberties and was sentenced to 12 months of community custody. He also was required to register as a level one sex offender — those considered least likely to reoffend.

In addition, he was ordered to have no contact with anyone two or more years younger than him.

"There is considerable evidence in the record that suggests the principal did not inform Clark's teachers, coaches, or relevant staff of Clark's status," Gonzalez wrote. "The evidence also suggests that the principal did not develop a safety plan, let alone one that would have helped Clark avoid students two or more years younger than him."

Chief Justice Barbara Madsen wrote in the opinion for the dissent that the majority decision exposes school districts to liability for things they can't control.

"Because a school district does not owe a duty of care to students who are injured by the criminal conduct of other students while not in the custody of the school district, and because the plaintiff has failed to establish proximate cause as a matter of law, I would affirm the trial court," she wrote.

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